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Boisey Levern Neal
(Defendant)

V.

STATE OF MARYLAND
(Respondent)

IN THE
CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY, MD.

CASE NO.: K-2007-1393

* * * * *

MOTION FOR MODIFICATION OF SENTENCE

Now comes the defendant Boisey Levern Neal, in proper person. On this 16th day of DECEMBER 2013, Pursuant to rule § 4-345 (e) (b) of the Maryland Rules of Procedures files this motion under guise rule of law that gives this Honorable Court Revisory power to modify its sentence due to a **mistake/misunderstanding/** that would cause the sentence to become **irregular/ irregularity** in its serving of sentence. The defendant humbly and respectfully moves the Honorable Judge William C. Mulford II to please hear this motion for the following reasons:

1. Amended Commitment Record does not reflect the imposed sentence on sentencing Transcript... The Honorable Judge William C. Mulford II did not impose a 15 year Concurrent Sentence to begin on June 14th, 2007. The Transcript is the true record of the Honorable Court and if there is a conflict between the transcript at sentencing and the Amended Commitment Record, and unless it is shown that the transcript is in error, ***The Transcript Prevails.*** (A similar Rule Applies to Docket Entries)
2. The defendant has served 6years and 5 months on Count No: 6 Charge: CJIS: 15299 Handgun use/Felony Violent Crime. Sentence of 10 years with 5 years suspended and the first five years w/o parole, which was imposed “First” and Count No: 6 was said begin on June 14th,2007.
3. Md. Rule 4-351 (a)-(5), has not been followed that explains how “Consecutive” Sentence(s) should run... **Using (5)** - A statement whether sentences are to run **Concurrently or Consecutively** and **if Consecutively**, when each (**term**) is to begin with reference to termination of the preceding (**term**) or to any other outstanding or unserved sentence. **Count No: 1** Charge: CJIS: 20705 **Armed Robbery**. Sentence of 20 years 0 months 0 days 0 hours with 10 years 0 months 0 days 0 hours suspended. The Jail sentence in this count is “consecutive” to the jail sentence imposed in Count(s): To Count 6. [REDACTED]
[REDACTED]

CRIMINAL DEPT.

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CC:SAD
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Defendant Avers

1. That in no form or fashion in this motion for modification of sentence is the defendant challenging the conviction or judgment that has been imposed by the Honorable Judge William C. Mulford II. The defendant would like to further render his deepest apology to both the Honorable Judge William C. Mulford II and the State of Maryland, for filing any motions in the past that took up the Honorable Court's time or wasted the State of Maryland tax payer's money. The defendant only blames his own ignorance of the law at the time of filing any motions without proper understanding of the law and the Md. Rules, and not the integrity of the Honorable Court... so for this reason and this reason alone, I ask that my apology be viewed as sincere with only expectations of acceptance...
2. The defendant has written to the Anne Arundel County Public Defenders Office to no avail. The defendant is indigent at this time and is unable to afford legal representation and therefore has no choice but to, research, and prepare this said motion for modification of sentence. In support of this motion the defendant ask for the facts to be heard and ruled on in accordance with the United States Supreme court's holding in *Haines v. Kerner, 404 U.S. 519(1972)*, which states; "A Pro Se litigants pleadings are to be held to less stringent standards than the formal pleadings drafted by attorneys." *Haines*, being applicable to pro se citizens is to be Fortiori to be given greater deference to: (A) confined prisoner's and (B) confined prisoner's pleading a denial of the constitutions guarantee of "meaningful access to the courts"... the right to petition.
3. The defendant is now in the custody of Warden J. Phillip Morgan of the Maryland Correction Training Center, at 18800 Roxbury Rd. Md, 21746. The defendant has made every effort to have the defendant's current situation and circumstances heard by Warden J. Phillip Morgan also to no avail.
4. The defendant ask the Honorable Judge William C. Mulford II to see every statement that is made within this motion that are true by the **Md. Rules and Procedures**, and **due Process of the law**, be viewed as legitimate issues for relief and also to bring correction to the Hagerstown Regional Commitment Office in their actions of not following the Md. Rule 4-351 (a)-(5) and the sentencing orders imposed by the Honorable Judge William C. Mulford II of the Anne Arundel County Circuit Court when the defendant brought it to the Department's attention by presenting the sentencing orders from the transcript at sentencing.

STATEMENT OF FACTS AND PROCEDURAL HISTORY OF CASE

The defendant has found himself in a type of predicament one finds in a popular Joseph Heller novel, the frustrating contradictory or paradoxical situation called "**The Catch 22**"...

The defendant appeared before the Honorable Judge William C. Mulford II on March 28th, 2008 at which time the defendant was found guilty and sentence. Under **Md. Rule § 4-351 (a) section (1) though (6)**, on April 4th, 2008, in accordance to the clerk of the court, the following Amended Commitment Record was issued as the true statement of the Honorable Judge William C. Mulford II. :

Count No: 1 Charge: CJIS: 20705 **Armed Robbery**. Sentence of 20 years 0 months 0 days 0 hours with 10 years 0 months 0 days 0 hours suspended. The Jail sentence in this count is "**consecutive**" to the jail sentence imposed in Count(s): To Count 6

Count No: 6 Charge: CJIS: 15299 **Handgun use/Felony/Violent Crime**. Sentence of 10 years 0 months 0 days 0 hours with 5 years suspended. The Jail sentence in this count is Concurrent with the jail sentence imposed in Case(s):

Split
Sentence

All but 15 years 0 months 0 days 0 hours with 10 years 0 months 0 days 0 hours is suspended and the defendant is placed on probation for a period of 5 years 0 months 0 days 0 hours commencing upon

-
- X 1. Release of Defendant from physical incarceration.
2. Release of Defendant from parole, or mandatory supervision pursuant to Art. 41, Sec. 4-612.
-

The total time to be served is 15 years, 0 months, 0 days to run:

X A. Concurrent with any other outstanding or unserved sentence to begin on 06/14/2007

Issued as the true statement of the Honorable Court.

Under Md. Rule § 4-351 (a)-(4-5)

“When a person is convicted of an offense and sentenced to imprisonment, the clerk of the court shall deliver to the officer into whose custody the defendant has been placed a “**Commitment Record**” containing:

Using (4) - The sentence for each **Count**, the date from which the sentence runs and any Credit allowed to the defendant by law;

Using (5) - A statement whether sentences are to run **Concurrently or Consecutively** and **if Consecutively**, when each (term) is to begin with reference to termination of the preceding (term) or to any other outstanding or unserved sentence.

Base off the **Commitment Record** that was issued and delivered to custody, the defendant’s **Commitment Record** says that the defendant is to serve a 15 year Concurrent sentence, this is “**The Catch 22**”...

The defendant sent the Honorable Judge William C. Mulford II a copy of The Hagerstown Regional Commitment Office letter that states, “Yes”, you the (defendant) has a 15 year Concurrent sentence, but because it was imposed “first”, you must calculate your “sentences” from March 28th, 2008

The defendant ask the Honorable Court to see letter sent to the Honorable Judge William C. Mulford II dated September 23rd, 2013...

Now the defendant ask the Honorable Court to see States Attorneys opposition that was sent to the defendant dated July 26th, 2013: statement number 2, States reads as follows;

This Honorable Court cannot impose a Concurrent Sentence to a sentence that had yet to be imposed.

The defendant ask the Honorable Court to see Attorneys opposition dated July 26th, 2013

So the defendant now ask the Honorable Court, which one is correct, The Hagerstown Regional Commitment Office or the States Attorneys Office?

The defendant would like to now show that neither of the two are correct base off the sentencing orders by the **Honorable Judge William C. Mulford II**.

Conflict between the Sentencing Transcript and Amended Commitment Record.

The defendant now asks this Honorable court to see the **Sentencing Transcript** and the imposed sentence(s) by the **Honorable Judge William C. Mulford II**. The defendant would like to first state that the Honorable court never used words “Metaphorically” when imposing sentences. Words at sentencing are to be taken “Literally”.

On March 28, 2008, the following sentences were imposed by the Honorable Judge William c. Munford, stated from the true record of this Honorable court. See sentencing transcript, pg. 21 lines 10-13, the “first” sentence, count 6, is imposed:

“Sir, in terms of count 6, which is the handgun in a crime of violence, its 10 years to the Division of Corrections”
“I will suspend all but five years. That will begin on June 14, 2007”

The Honorable court can see that in “term” or (single) terms of count 6, the Honorable Judge William C. Mulford II, has imposed this “first” sentence to begin on June 14, 2007. The “term” has been served as this Honorable court can see since June 14, “2012”, day for day, **first five years without parole**. The word “**concurrent**” is not used when this sentence is imposed.

The defendant now asks this Honorable court to see the **Sentencing Transcript** once more pg. 21 lines 16-19 as count1 is now about to be imposed:

Count 1, for Armed Robbery, The Sentence is 20 years in the Division of Corrections. Suspend all but 10 years. That sentence is to be consecutive in count 6.

The word “**concurrent**” is not used when **Count 1** is imposed either, so the defendant ask why does the Amended Commitment Record read **15 years Concurrent?**

According to the Honorable Court of Special Appeals of Maryland, the imposition of a concurrent sentence is deem improper because a sentence made to run concurrently with a sentence that had not yet been meted out to an accused as it could, and often did, lead to confusion is the courts view. See Alston v. State, 38Md. App. 611.

The defendant out of ignorance file a Motion to Correct an Illegal Sentence base off Alston v. State, 38Md. App. 611, and Melvin J. White v. State, 41 Md. App.514. The Honorable Court denied the defendant’s Motion.

1 And then in this case, I mean, the firing of the
2 gun, and I got to be honest, sir, I mean, you were calm when
3 you loaded it, and when you shot it.

4 And -- I mean it's a -- it's a -- you know, it's
5 one thing -- you pointed the gun at the clerk. And then you
6 shot the gun. I know you shot into the wall next to him, but
7 it was just so calm to watch you load that and then shoot it.
8 And point it at him. So calculating. Just really elevates
9 the level of violence.

→ 10 Sir, in terms of Count 6, which is the handgun in a
11 crime of violence, it's 10 years to the Division of
12 Correction. I will suspend all but five years. That will
→ 13 begin on June 14th, 2007.

14 In terms of the armed robbery, you actually -- you
15 did more than just brandish the weapon in this armed robbery.

→ 16 You actually used the weapon. Count 1, for armed robbery,
17 20 years in the Division of Corrections. Suspend all but
18 10 years. That sentence will be "consecutive" to the sentence
Has Not Been → 19 in Count 6. So the overall sentence is 30 years, suspend all
Applied... 20 but 15 years.

21 Upon your release, sir, you have five years
22 supervised probation. You will have to pay the court costs.
23 I will waive the supervision fee. You'll provide a DNA
24 sample as required by law. Pay for any random urine tests.
25 Submit to and complete any alcohol and drug evaluation

*Md. Rule 4.351
Has Not Been
Applied...*

So now the defendant ask the Honorable Judge William C. Mulford II
And the Honorable Court for Anne Arundel County to look at the facts that the
defendant has served his full term in count 6 that was said to start on June 14th, 2007.

The defendant has no **starting date or reference** made to **termination** of the
Preceding (term) which is count 6, which is the handgun in a crime of
violence, five years That begin on June 14, 2007”

The defendant wrote to The Hagerstown Regional Commitment Office and
Ask why has all of the defendant's sentences been added together if the
Amended Commitment Record that was issue states the total time to be
Served is **15 years Concurrent?**

The Defendant wrote to Supervisor Ms. Marcene Kipe once more and
question her to please cite any “**Maryland Rule**” that could explain her
actions for lumping all “3” of the Defendants sentences together and only
using the Defendants “**first**” sentence as the starting date that clearly was
imposed concurrent by Amended Commitment Record.

This is **Ms. Marcene Kipe** responses to my question in her letter dated
December 18, 2012. The Defendant receive the following Statement:

“Your correspondence to Warden Morgan has been forwarded to this
office for a response. In your letter you state you believe you are serving a
15 year sentence and no more. You state your other sentences are ‘eaten’
up by the 15 year sentence. After an investigation into your concerns, it
was determined you are serving a total of 26 years, 5 months, and 25 days
for “all your sentences”. I will explain how this term was established. I
have attached a chart that explains your sentences and their structure.
Consecutive sentences are “added on to” whatever they are consecutive with
to determine when the end. Hopefully the chart will explain the
relationship between all of the sentences. {End of letter from Supervisor
Ms. Marcene Kipe.}

The Defendant would like to ask this Honorable Court is this a correct explanation
according to any Md. Rules? And if so, what Md. Rule will justify this explanation
for adding sentences together to read as one sentence when count 6. handgun in a
crime of violence, five years has already been served?

The defendant asks this Honorable court to see that it is well established and a settled “Rule of Law” by the Court of Special Appeals, that a judge at or during sentencing hearing has no (lacks) authority to lump his or her imposed consecutive sentences to one total term (serving of sentences) of confinement. See **Wilson v. State 45 Md. App. 675.**

So the defendant asks this Honorable court, if the Honorable Judge William C. Mulford II has no authority to lump his imposed consecutive sentences together as **one total term** (serving of sentences) of confinement, then how does **The Hagerstown Regional Commitment Office** have the authority to lump sentences together? And the Amended Commitment Record states the total time to be served is **15 years Concurrent**. What Md. Rule supports these actions? Do you add to a **Concurrent sentence**? This is not the **Md. Rule §4-351**.

All Md. Rules must be followed

Md. rule 1-201

(A) Provides that the Maryland rules shall be construed (translated Literally) to secure simplicity in procedure, fairness in administration and elimination of unjustifiable expense and delay.

Moreover, when construing the rules, it must be borne in mind that they are **“Precise Rubrics”** (Accurately Expressed Explanatory words for direction), established to promote the orderly and efficient administration of Justice, and thus are able to be strictly followed.

While we fully understand that the Maryland Rules of Procedure are not merely helpful hints to practice and procedure in the courts but are instead **“Precise Rubrics”**, intended to be followed, we (The Court of Special Appeals) surely do not believe that they should be interpreted to reach absurd and wholly unintended results.

As with statutes, we are obliged to construe the rules to carry out the real intent of their promulgator. See also Best v. State, 79 Md. App. 241,249,556 A.2d. 701 (1989): A rule – any rule- does not exist for its own sake alone, but only to serve an undergirding purpose.

When in our judgment that **undergirding purpose** has clearly been served, we are not about to worry over whether there has been blind and literal obedience to the rule in tradition of a Prussian drillmaster. **The Maryland Rules Must Be Followed To The Letter...**

The **Md. Rule § 4-351 has not been followed or the** Honorable Judge William C. Mulford II sentences orders.

The defendant now asks this Honorable court, does the **Md. Rule § 4-351 (a)-(5)** which explains how consecutive sentences should run, use the word ‘**add**’?

The word consecutive means, following one after another continuously in sequence. This is not the **Md. Rule § 4-351 (a)-(5)**, to add consecutive sentences together as one sentence... **Md. Rule § 4-351 (a)-(5)**, clearly states: ‘When a person is convicted of an offense and sentenced to imprisonment, the clerk shall deliver to the office into whose custody the defendant has been placed, a commitment record containing (**using 4**) the sentence for each count, the **date** from which the sentence runs, and any credit allowed to the defendant by law.

Furthermore, after the clerk insures that the commitment record is “prescribed” lay down or imposed authoritatively what the sentencing judge has stated in **Md. Rule § 4-351 (a)** section (4), then the clerk he/she must follow **Md. Rule § 4-351 (a)** section (5), by writing a statement whether sentences,(under each count), are to run concurrently (together as a single sentence) or consecutively(separately apart from each other), and if consecutively, when each (single) **term** (serving of sentence) is to begin with **reference to termination** (ending of serving of sentence) of the **preceding term** (the sentence being before the other serving of sentence to come next) or to any other outstanding or unserved sentence. Count 6. Handgun in a crime of violence, 5 years without parole is the **preceding term** that has already been served. Count 6, was said to start on June 14th, 2007.

The construction of language that is used in **Md. rule 4-351(a)** section(5), is clear and precise “that a judge at or during sentencing must make sure the record reflects that his/her sentence(s) imposed has an initial starting date for the first imposed sentence”, and if the second sentence is imposed to run consecutive to the first imposed sentence, then the sentencing judge should give reference as to when the second sentence is to begin at the ending of serving the(term) first imposed sentence, after which, it then becomes the clerk of the court’s obligation (duty) to send a written statement to the entity, i.e.; Detention Center, DPSCS, who has custody of the accused, showing when and how the second sentence imposed consecutively(apart separately) sentence is to begin. Furthermore, if the Court of Appeals judges in creating **Md. rule 4-351(a)** section(5) had just wanted the judge at/during the sentencing to run his/her imposed sentences consecutively, without giving any type of reference as to when the next term(serving of sentence) is to begin, then the Court of Appeals judges would have simply stated “A statement showing whether sentences are to run concurrently or consecutively to each other.” then there would be no error to be because the “rule” would then be suffice...

The defendant has become a victim by The Hagerstown Regional Commitment Office as well as the Parole Commission and the State of Maryland. All three parties have indeed turned a deaf ear to the defendant's constant supplications to aid and assuage the distress within the defendant's difficult and unpleasant situation of confinement. It is compulsory and essential that 'all' Md. Rules must be followed as required by law....

The Defendant has served the mandatory 5-year sentence that the Honorable Court imposed in count 6. And the sentence for Count 1, is an eligible parole sentence, however, it has "**no starting date**" as required by the Md. Rule 4-351(a)-(5), And clearly the defendant's Amended Commitment Record is incorrect. The Honorable Judge William C. Mulford II Sentencing orders have not been followed.

Wherefore, it is respectfully requested that this Honorable Court:

- A. Grant a hearing for this Motion for Modification of Sentence.
- B. Correct the wrong that the Hagerstown Commitment Office has done by not following the sentencing orders from The Honorable Judge William C. Mulford II or the Amended Commitment Record.
- C. Any and all further relief that this Honorable Court can provide in this matter.

Sincerely Submitted,

Boisey Levern Neal - 349-871

Boisey Levern Neal 349-871

18800 Roxbury Rd.

Hagerstown, Md. 21746

CERTIFICATE OF SERVICE
Under Md. Rule 1-323

I, Boisey Levern Neal, HEREBY CERTIFY THAT on this 16th, day of December 2013, a copy of the foregoing Motion for Sentence Modification and/or Motion for Reduction of Sentence, was mailed, postage prepaid, to the Office of the State's Attorney for Anne Arundel County Circuit Court.

Boisey Levern Neal - 349.871

Boisey Levern Neal
Defendant,
M.C.T.C.
18800 Roxbury Road
Hagerstown, Maryland 21746

Received by Judge Mulford's Chambers on 1/2/14